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ABSTRACT

Resolution of conflicts and disputes in traditional Athabascan society was based on assumptions that: (1) the authority of the leader was absolute, for as representative of both village and victim, he was limited only by the fact that the crime had to be serious enough for third party intervention and that severe sanctions demanded village consensus; (2) once called before the village authority, an individual was already determined guilty; (3) the offender was called before the village authority to redress both public and private wrongs via repentant reconciliation. Besides its authoritative character, Athabascan law entailed flexibility and deliberateness. Flexibility was manifest in formal checks on the chief's authority and the personalistic nature of legal proceedings, while deliberateness was manifest in the lack of haste in the decision making process. Among the modern day problems posed by traditional Athabascan law ways are: (1) failure to perceive the legitimacy of white legal authority, since such authority is delegated to figures of "low" status; (2) lack of parallels among the laws most frequently invoked against Athabascans (drunkenness, petty assult, etc.); (3) an impersonal vs a personal justice; (4) an assumption of innocence rather than guilt; (5) lack of parallels in the defendent/prosecutor process; and (6) abstract laws. (JC)

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No. 7, August 1972

Traditional Athabascan Law Ways and Their Relationship to Contemporary Problems of "Bush Justice"

Some Preliminary Observations on Structure and Function

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and
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Victor Fischer, Director of the Institute
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TRADITIONAL ATHABASCAN LAW WAYS AND THEIR RELATIONSHIP TO CONTEMPORARY PROBLEMS OF "BUSH JUSTICE"

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by

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Stephen Conn

NOTE:

This study specifically avoids making concrete recommendations, even those intuitively obvious ones, which might flow from our observations and analysis. This is so because it is the first of a 4-part series which will include analysis of Eskimo law ways, an alternative interpretation of our findings and, finally, a systematic analysis of Bush Justice Administration. In this final number of the series, a number of concretely specific and general recommendations for change or modification of the system of Bush Justice will be proposed.

PREFACE

This paper is directed toward
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PREFACE

This paper is directed toward helping achieve a better understanding of traditional law ways among Alaska's Athabascan Indians and of the present state of the administration of law in the "bush"—village Alaska. An outgrowth of the 1970 Bush Justice Conference sponsored by the Alaska Judicial Council, the paper's primary purpose is to help facilitate establishment of more appropriate delivery and administration of legal services for ethnically distinct populations of Alaska.

Aside from that specific purpose, the paper also reflects the current growing interest among ethnographers and others in the traditional social organization techniques of primitive peoples, especially in the area of dispute solving and conflict resolution. In recent years, Nader (1965) edited an entire issue of the *American Anthropologist* devoted solely to this subject. Scholars such as Bohannon (1965), Hoebel (1965), Whiting (1965), and others have written extensively in this field.

Studies of law ways almost uniformly suggest that techniques of dispute solving and conflict resolution are inextricably intertwined with social, cultural, and economic conditions. As Pospisl noted this year:

> (to the ethnologist, law) . . . is not an autonomous institution but rather an integral part of culture . . . his law is part of "living law," created and carried on by members of a particular society, a social phenomenon that is ever changing because of human action.

The scope, content, and meaning, as well as the administrative techniques of the law, are determined by the culture that develops them. Thus, people undergoing culture change may experience serious problems in understanding contemporary legal systems that are based on assumptions radically different from those with which

they are familiar. Research that elucidates the traditional legal thought of groups undergoing change not only can make clearer the basis of these misunderstandings, but also can provide valuable insights in dealing with minority subcultures.

However, if each culture's law system were to be described solely in the terms of the culture studied (a so-called "emic" analysis, such as that proposed by Bohannon [1969]), its lack of comparability to Euro-American law would be of little use to students of comparative law or to those concerned with the administration of justice. The product would be an obscure study unrelated to any other. As Pospisl (1972:4) notes, quoting Gluckman and Hoebel, it is necessary, and in fact inevitable, to translate traditional terms into those usable by persons accustomed to American jurisprudence.

The authors of this paper are an anthropologist (Hippler) who has spent five years studying Eskimos and Indians in Alaska, and an attorney (Conn) with cross-cultural experience in Brazilian and Navajo law. This interdisciplinary collaboration was deemed most appropriate for such research since it would add to the substantive perspectives of law best developed by an attorney those insights into the unique character of the distinct cultural group best provided by an anthropologist. Methods used in the study include a review of the ethnographic and other pertinent information, interviews with Alaska Natives in various communities, and interviews and observation of law enforcement, judicial, and legal personnel servicing this population.

Appreciation is expressed to all those, especially the village people, who have assisted in this work.

Arthur E. Hippler
Stephen Conn

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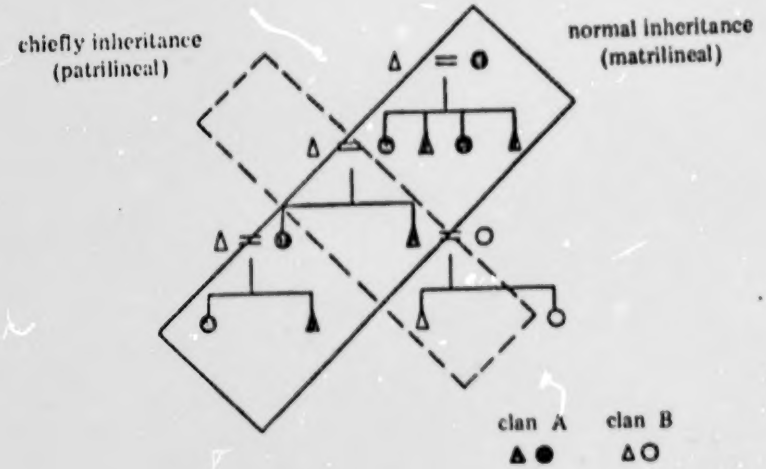
INTRODUCTION

This paper analyzes Alaska Athabascan aboriginal law ways and discusses discontinuities between them and contemporary Anglo-American law, which create some difficulties for many Athabascans in their relationship to contemporary legal processes. These difficulties stem not from the lack of a traditional legal system, but precisely from its existence—in a form that was deeply integrated into all aspects of Athabascan life. The traditional legal system operated in such a way as to develop expectations and assumptions about normative behavior that in some cases are discordant with contemporary law.

A number of authors, chiefly Osgood (1936) and McKennan (1959, 1965) have commented on certain aspects of the Athabascan system of law. Although their insights have been useful, this paper is based most heavily upon recent researches by the authors into aboriginal Athabascan law ways.[1] The information is primarily relevant to the Upper Tanana Indians, though much of it has application to most of Alaska's Interior Athabascan population. The

[1]This study, requested by the State Judicial Council, is for the purpose of better understanding Alaska's Native law ways, toward the end of improving "bush justice" in Alaska, and is the first in a series of studies of Alaska Native law ways now underway. To this end the work has been done jointly by an anthropologist and an attorney.

FIGURE 1



In this diagram, the triangles represent males, the circles females, and the equal sign between them indicates a marriage. Lines descending from the marriage show offspring. One can see that all children took the clan affiliation of the mother, while the chieftainship, which went by patrilineal inheritance, actually alternated between clans and therefore moities.

the modal emotional organization of the group's members. The critical issue of Athabascan emotional organization to an analysis of law ways is the primary importance placed on control of emotional impulses. The concern with internal individual controls tended to lead Athabascans toward a great need for balancing relationships and obligations. Thus, tendencies toward explosively violent emotions were defended against by reliance on external authority at least as much as by reliance on internal controls.[5]

This was expressed in two main ways. First was the potlatch, a post-funeral gift-giving ritual, through which the Upper Tanana

[5]An explication either of the modal emotional organization or the methodology used to uncover it is beyond the scope of this paper and will be dealt with at length elsewhere.

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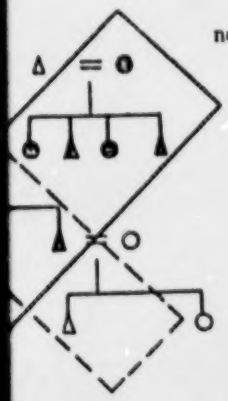

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Indians not only alleviated guilt and anxiety over the death of a loved one, but also expressed aggression and affiliation needs, and promoted political power.[6] They also used the potlatch to maintain and strengthen the balance of relationships and obligations between kin groups.

The emphasis on control of emotional impulses was also institutionalized in the law ways, and was manifestly expressed in the careful deliberative techniques that they demanded. The importance of externalizing these controls was emphasized in the vesting of absolute power in the chief. The need for internal psychic balance to overcome fears of emotional disorganization, which was overtly expressed in the attempt to maintain a balance of harmonious and reciprocal obligations between groups, was further demonstrated in the actual operation of the legal system.

Athabascan Law Ways—The Philosophical Basis

The resolution of conflicts and disputes in aboriginal Athabascan society was based upon three primary assumptions. The processes which flow from these assumptions were apparently uniform for nearly all Alaska Athabascans. The assumptions are as follows:

1. Within his sphere of competency, the authority of the leader was viewed as absolute. However, two kinds of constraints upon that absolute authority did in fact operate. First, it was limited to disputes considered serious enough to demand intervention of a third party (the authority) who at the same time represented the corporate well-being of the village and the interests of the victim of the wrongdoing. Second, in order to impose the most severe sanctions for particularly offensive acts, this authority depended on the adroit use of conciliatory techniques to mold village opinion and to achieve a consensus of other villagers respected as leaders within their lineage. If the sanction intended was warfare, this consensus would extend to other powerful persons linked through clan relationships in neighboring villages.

[6]The authors are presently, with Dr. L. Bryce Boyer, preparing an article describing the psychological and social significance of the potlatch.

2. To be called before the village's authority for wrongdoing implied that the authority had reached a conclusion that the individual was "guilty." That is, his conduct was at variance with widely recognized village norms that defined "bad" public and private acts.[7]

3. The offender was called before the village authority for two reasons. First, he needed to be reconciled with the village through acts that demonstrated his sorrow for deeds that had potentially damaged the balance between lineages in the community. Second, he had to make amends to the specific victim or victims of the wrong committed. The problem before the authority, therefore, was to find a just solution to both the public and private wrongs inherent in a single act of misconduct.

The determination that the act in question was bad enough to warrant a hearing required that the authority apply village norms to facts ascertained by him or his associates through investigation.[8] However, the selection of a remedy to reconcile the individual with the village and to right the private injury was achieved during the hearing through a conciliatory process. The outcome of the process of reconciliation was very much dependent upon the state of repentance of the wrongdoer.

[7]"Bad acts" were those with concrete and ascertainable consequences that impaired private property rights and village relationships. Thus, acts that might be categorized as crimes for the benefit of teaching youngsters about right and wrong—theft, slander, adultery, or murder—were categorized only after experience had shown that they *empirically* impaired individual survival and, more importantly, the success of cooperative work endeavors and interrelationships of village life.

[8]Wrongful acts that involved such diverse activities as slander, theft, or adultery were described from the standpoint of injuries as property losses. The sanction of remuneration for the victim in material terms facilitated the resolution of private disputes with solutions that, while harsh, were less severe than execution or banishment. The wrongdoer could also expect to lose his public reputation for "right acting." The implications of this loss in reputation in the many cooperative endeavors of village life were that he might suffer additional property loss. A man who stole might be described as a thief by villagers for ten years after the act.

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The Pragmatic Structure and Operation of Athabascan Law Ways

Besides its authoritative character, the Athabascan law system had two other identifying characteristics. The law ways were flexible, and all proceedings were deliberated at length. Flexibility entered into traditional law in two ways. The first way was through formal checks on the chief's authority and the second was through the personalistic relations that characterized the proceedings.

The chief was the final authority. Nonetheless, if it was felt that the chief was making a poor judgment, the subchief, who occupied a position of authority second only to the chief, might be approached on the matter by one of the lineage heads and would thereafter openly state his disagreement. At this point, the chief had to conclude that more deliberation was necessary, because if someone brooked his judgment in council, he would only do so for extremely important reasons. A chief who would ignore such a clear signal would soon find himself regarded as "hasty." Such a reputation was hard to overcome, and Athabascans strove to avoid being so labeled. The need to avoid a reputation for hastiness added to the already existing tendency for long and careful deliberation.

Personalistic rather than impersonal relationships existed between the authority and the accused. Justice was not expected to be blind. In certain cases, even murder could be overlooked if, for example, the murderer was a "good man," an important, moral man who (very pertinently) had a large matrilineal kin group. Overlooking this kind of political factor could lead to war.

The system was deliberate in that no decisions about important matters were made in haste. Concerning critical issues such as murder, deliberations might be continued for as long as five years. Deliberation also entered into the techniques for forgiveness and reintegration into the group. A man who was a convicted or confessed thief would have to bear that stigma for as long as ten years. Effectively, this acted as a period of probation. That is, a recidivist during the probation period ran the risk of having his old offenses taken into account during his new hearing. Very old offenses, however, would be given less weight in later hearings about new wrong acts.

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Major Offenses and Their Resolution

The interaction of the general principles of balance, flexibility, and deliberativeness with the absolute authority of the chief, the presumed guilt of the accused, and the punishment through repentance and restitution can best be seen in a description of the resolution of specific antisocial acts.

Adultery

Adultery was considered to be a serious offense because it could lead to violence, which was very dangerous because it strained the fabric of mutual obligations and reciprocal responsibilities that tied together not only kin groups, but communities. At its worst, adultery might lead to murder, the splitting up of a village, and hence war between villages.

When adulterous acts were brought to the attention of the chief, usually by the offended lineage heads, this ordinarily meant that the lineage heads did not believe the problem could be solved outside of the council. Though bringing such an act to the attention of the council brought shame on the offending matrilines, to ignore the situation could result in potentially very dangerous and violent consequences. Therefore, often both the offending matriline and the offended matriline would conjointly bring the problem to the chief.[9]

The guilty individuals, without their spouses were brought before the chief and council to discuss their case. If they chose to deny guilt at this first meeting, a second meeting was held with the spouses present. If the adulterers still stubbornly denied their guilt, the offended spouses and the council would tear their clothing from them and beat the offenders severely. If, on the other hand, the guilty parties admitted their guilt at the first meeting, they would be spared the beating, but would still be subject to the rest of the sanctions.

At this point, the offending man would be ordered to remunerate the offended husband. The husband was then permitted to give a formal warning to the adulterer that if the act were repeated, he would kill the offender. This warning was given before

[9]The matriline most offended was that of the victimized husband; though Athabascan women were by no means reticent and did not make life easy for a straying husband.

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the chief and council and meant that offender could be undertaken with in taken for his death, and, even if he w recompense that his relatives could ge small amount of "wergild" or death pay

If the adultery resulted in childbi to the father's relatives for upbringing, mother's clan. A hearing similar to th held before the chief, and the guilty m fine (damages) to the husband of his pa

Theft

Theft was also a serious offense, circumstances such as hunger might party would bring the case to the atte call both the complainant and defenda the lineage heads. If the man admitte mitigating circumstances, he would be his actual damages, plus an additional thief's matriline was not expected to and indeed had a vested interest in enf to prevent antagonisms from growing thief admitted his theft but had stole need, especially hunger, he would be fi but his matriline would be expected moreover, would be shamed since it w known about their kinsman's need and

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the chief and council and meant that the killing of the recidivist offender could be undertaken with impunity. No revenge could be taken for his death, and, even if he were an important man, all the recompense that his relatives could get from his death was a very small amount of "wergild" or death payment.

If the adultery resulted in childbirth, the child would be given to the father's relatives for upbringing, even though it belonged to it's mother's clan. A hearing similar to that described above would be held before the chief, and the guilty man would be forced to pay a fine (damages) to the husband of his paramour.

Theft

Theft was also a serious offense, but one in which mitigating circumstances such as hunger might be considered. The offended party would bring the case to the attention of the chief, who would call both the complainant and defendant before him in council with the lineage heads. If the man admitted his guilt and there were no mitigating circumstances, he would be made to pay the amount of his actual damages, plus an additional recompense to his victim. The thief's matriline was not expected to help him with this obligation and indeed had a vested interest in enforcing the judgment in order to prevent antagonisms from growing between kin groups. If the thief admitted his theft but had stolen through the press of great need, especially hunger, he would be fined like the unmitigated thief, but his matriline would be expected to assist his repayment and, moreover, would be shamed since it was their responsibility to have known about their kinsman's need and to have assisted him.

If a thief was either unrepentant, denied his guilt, or if there were no mitigating circumstances, his punishment was more severe. In addition to being forced to recompense his victim, he might be banished from the village for from one to several years. A chronic recidivist would be absolutely banished and, if he returned, would do so on pain of death. Killing a banished man could be done without fear of retaliation and without assuming the obligation to recompense a dead man's relatives. It should be noted that banishment was nearly a capital punishment. Living alone in Interior Alaska is almost overwhelmingly difficult. Further, since Upper Tanana bands tended to distrust each other, the exile might be killed by wandering hunters if he could not account for himself to their satisfaction. Finally, a thief who had been banished and returned at

the end of his sentence, and who had paid recompense to his victim, still faced the approximate ten-year period of "probation."

Even though borrowing and then "forgetting" to pay back or damaging the borrowed goods was not really considered theft, Athabascans tended to borrow only from matrilineal kinsmen to avoid inter-clan hostility. Nonetheless, the chronic borrower who was slow to return things that he had borrowed from non-kin was tolerated and was not brought before the chief. He did, however, lose considerable status because of this weakness.

Murder

Murder was the most serious of crimes and could be punished by death. There were various ways in which this problem might be handled, however. The complainants in a murder case were usually the matrilineal kinsmen of the victim. The chief then either had to persuade the kinsmen of the victim to accept a death payment from the killer, or persuade the kinsmen of the killer to accept the death sentence. If the matriline of the victim were convinced to accept a death payment after a hearing at which the murderer and various witnesses, if any, were heard, the matter ended there. A death payment would generally be accepted if the victim was felt to have provoked the attack, or to have been of much lesser importance than his killer. Among the considerations involved would be the importance and size of the killer's matriline. Even if they would accept the death penalty for one of their number, they might become unfriendly to the complainant group. In this event, a tension and imbalance in the mutual expectations and obligations might prove disastrous for the group. If the victim's matriline demanded the death penalty and the chief concurred, the murderer was killed by an executioner appointed by the chief. Should the murderer attempt to flee, he would be considered a fugitive and anyone could kill him with impunity.

Complications occurred when a "good" man (influential, well thought of, and from a powerful family) murdered a man of similar stature. In such a case, if the offended matriline would not accept a death payment, there was usually no way for a death penalty to be enforced. The offended matriline would feel it could not ask for the death of a "good" man, and the offending matriline would not willingly acquiesce in the capital punishment of one of their

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The offended matriline would contact all of its major family heads in all of the surrounding villages. Discussion would continue intermittently for up to five years to determine whether war should be initiated. Such a process realistically occurred only when the offender and his victim were not only from different clans, but from different bands (villages), since the prospect of intravillage war was so terrible that another solution to the conflict had to be found.

The clan's discussion about whether to wage war involved several elements. There was always the hope that in time the intransigence of the parties to the dispute would weaken and an alternative other than war would be found. The extreme difficulties and dangers of war and subsequent retaliation were pointed out in detail to deter those who demanded vengeance.

If and when all the lineage heads in the clan and other important men who were privy to the discussion were convinced in favor of war, the clan or the lineage head whose dispute had led to this situation would be made war chief and preparations for war would begin. There were no conscientious objectors to such wars. When the war chief called his men, a refusal to comply was met with summary capital punishment. At this point, "basic training" was started. Chiefs and lineage heads would assemble their men for exercises, practice wrestling, and weapons training. The men were drilled in maneuver and fire tactics that primarily emphasized stealth, surprise, and fire power. Additionally, the men were trained to dodge arrows. The chief and lineage heads would fire arrows at the men, who would try to avoid them. This training was expected to produce its share of casualties and even fatalities.

A date would be set for massing and surprise attack. Everyone understood and accepted that some people who were actually neutral in the dispute would be killed. This would, of course, widen the conflict. On the other hand, members of the offended lineage living in the village of the offenders faced the possibility of being slaughtered as potential fifth columnists.

[10]In fact it appears that *all* wars started this way.

There was no simple way out of such a war, which had the character of a war of extermination. The wars ended with the destruction of one or another group, or dragged on for a generation and were finally abandoned out of exhaustion. It was for these reasons that war was feared, and every effort was made to avoid it.

Thus, Athabascan warfare was not a random haphazard occurrence, nor was it a spontaneous a-legal occurrence. It was bounded by rules and institutionalized procedures. That is, war was not simply the result of a lapse of legal organization, but rather an integral part of the system, and the threat of war was a major deterrent to murder.

Summary of Athabascan Law Ways

From the foregoing brief overview, some aspects of the structure and function of traditional Athabascan law ways seem clear. Perhaps most importantly, the "law" was in no sense a thing apart from everyday life. Law ways stressed the maintenance of harmonious relationships between the matrilineal kin groups. The application of justice was to a significant degree dependent upon the attitude of malefactor, and the bent of the law was toward recompense of victims and reintegration of the offender.

The chief determined the resolution that a conflict or dispute should have, taking into account the degree of guilt and repentance of the wrongdoer, his position in society, and the likely aftereffects of the judgment. Thus, the chief balanced off the multivaried claims of his society in the given issue in such a way that the general social good was upheld. He never acted precipitously.

The importance of deliberation and flexibility cannot be overstated. Though the chief was absolute in one sense, the fragility of the social order of the band was such that he could not afford to act as a dictator. Discussion, consultation, and slow action prevented fragmentation of the small bands, which could have endangered everyone's survival, not to mention the possibility of precipitating warfare.

Nonetheless, authority was vested in the chief. Individuals from different lineages did not attempt to resolve serious disputes between themselves, since such an attempt could precipitate feuding and endanger the carefully developed system of mutual obligations and

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The chief, however, acted in conjunction with the other important men in the community, which meant that a decision once reached actually was an expression of community consensus. While couched in terms of the chief's absolute authority, any sanctions undertaken actually had the unassailable support of all the dominant members of the community.

In structural terms, the administration of justice and the maintenance of the balanced relationships between kin groups and within a community were the same thing. The law, though abstractly normative, was concrete in the sense that offenses were not acts taken against an abstract code based upon philosophical distinctions of right and wrong, but, rather, they were acts that endangered the important network of obligations and expectations that made up Athabascan society.

However, even though the foregoing suggests equivocal application of the law, judgments were not meant to be made *ad hoc*. There was in fact the intention of universal application. Decisions of the legal authority rested upon assumptions of *obligatio*, in which the rights and duties of the parties were defined. The variance was actually part of the universal application rule.

Overall, then, Athabascan law ways reflected the manner in which the Athabascans integrated internal psychic needs, especially the need for controls and balance, with the press of environmental and social structural realities, such as their impoverished environment and fragmented residence patterns, to provide a balanced deliberate system for the resolution of the conflicts and disputes that are inevitable among human beings.

Law Ways and Culture Change

At present, Athabascans live in communities in which traditional power is no longer obviously legitimated by lineage heads and is no longer absolute. The authority for law enforcement is now in the hands of state troopers and city police. The institutional

organization and much of the emotional commitment to traditional law ways has disappeared, since the chief no longer can impose sanctions, *except* in his role as village leader, in which he can play upon special relationships or duties conferred on him by law enforcement officers. State troopers, who must travel to villages when crimes are reported, often informally select the village chief to notify the troopers of crimes and to sign criminal complaints. The chief may then achieve status as a dispute resolver and judge by using his option of notifying the authorities as leverage in seeking reconciliation, or even in imposing a sanction, when both the wrongdoer and victim are convinced that a ready solution to the dispute within the village is preferable to an arrest and conviction in the magistrate's court. This manipulation of informally derived power as a lingering threat is a faint replica of the use of possible intervention by the chief in earlier times to encourage individuals or their families to reconcile their differences.

There are, however, other ways in which the old system continues to have an impact on modern perception of law and legal process. Present day 20-year-olds have grandparents who lived under the old system. Their emotional expectations toward the present judicial system appear to reflect a transfer of attitudes from the older system.

Past and Present Law Ways: Some Disjunctions

Athabascans often fail to perceive the legitimacy and rationality of white legal authority. By the standards to which they adhere, this legal authority is irrationally delegated to figures of low and questionable status (village police, magistrates, and troopers). Police and magistrates perform in a manner that appears to be arbitrary and capricious when compared to the manner in which traditional Athabascan authority reviewed the circumstances of the offense and character of the offender with nearly excessive care. That care was directed to the issue of what outcome would serve to reconstitute the balance between lineages and the victim through compensation for the victim's injury and an admission of guilt and repentance.

That the forces of law and order are headquartered distant from the village and its personalized village relationships reinforces the impression that the state legal system responds arbitrarily to crime at the bush level. The authorities show little concern for remuneration

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of the victim of criminal acts, leaving that for a separate civil process for damages. This heightens the authorities' evident irrationality in the eyes of the Athabascan. In the court's levy of a fine or jail sentence, the judiciary seems to care for nothing more than form in its intent to punish. Lack of concern for the wrongdoer's continuing relationship with the village, his victim, and the victim's relatives is a confusing fact of contemporary American justice for Athabascans who experience it in "the bush."

Secondly, the laws for which Athabascans most often find themselves called to account—public drunkenness, petty assault, and disorderly conduct—do not have exact parallels in Athabascan society. Indians do not take these minor disorders seriously as long as they do not inconvenience anyone. To be arrested and detained for such behavior is bewildering and infuriating, especially when the consequences of the supposed bad act play little or no part in guiding the results of the criminal process.

A third problem arises from the Indians' perception of the judicial process and the participants in it. Certain aspects of the court's dynamics are striking if compared with the expectations of an Athabascan. For example, in contemporary American law, great emphasis is placed upon the adversary system. Out of a symbolic conflict between the parties and their attorneys, it is assumed that both sides of the issue of innocence or guilt, of liability or nonliability, will be presented before a decision is reached. Not only is conflict between the defendant and prosecutor permitted, but it is encouraged. Nothing like this existed in Athabascan law, where there was no such thing as a defense attorney.

Next, the judge is not personally engaged in the problem, nor is he already privy to the details of the dispute. He does not seek out gossip about the defendant, but dismisses this as hearsay and as inadmissible. Authority in court is strangely impersonal to one accustomed to the idea of personal justice. The defendant is not assumed guilty, but innocent. The arrest is not sufficient evidence of guilt, although the state has taken serious action against the defendant. Thus, in a criminal case, the court will even review the circumstances of arrest, as well as the act complained against, to determine whether the agencies of law enforcement have acted properly and whether procedural safeguards have been preserved for the defendant to ensure that a true test of both the positions of the defense and prosecution will take place.

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The trial itself places the initial burden of proof upon the prosecution, the representative of the state. Official conduct in pursuit of evidence for the prosecution is examined. Should that conduct be found to be faulty, the state's evidence will be excluded in whole or in part by the judicial representative of the state. The court may even be impelled to stop further consideration of the alleged criminal act and to dismiss the case. These conflicts between different officers of the white man's law, and the fact that procedural details can overwhelm the substance of a case, are inexplicable to one who presumes that being called before authority means that the fact of guilt has already been established.

The defendant has the legal right to stand mute in the proceedings, and to examine the evidence of prosecution and official conduct with respect to him. This is quite different from the traditional notion of meekly confessing and accepting punishment. Since his guilt in the eyes of the authority figures in the court may seem to the defendant to be a foregone conclusion, and since he does not understand adversarial dynamics, a meaningful consideration and waiver or assertion of his rights is difficult. The Athabascan defendant may be reluctant to challenge authority since he cannot see that it is in his interest to refute statements of the police. If he should plead hunger or poverty, he will find to his surprise that this is not very often considered mitigating.

The Athabascan defendant probably does not expect that a verdict of innocent will be the result of the proceedings. His aim is to mollify the authority figures by agreeing with them and thus appease their anger. Effectively, this means he will waive his rights to obstruct the official inquiry. Thus, he attempts to extricate himself from the criminal process by the traditional and expedient means of agreeing with everything, waiving his rights, and assuming that whatever the judge metes out as punishment will be just.

Local magistrates, who are the main embodiment of the judicial system to bush Alaskans, are often poorly trained in the workings of the correctional process and the social theories that underlie them. They are often motivated in their magistrial actions by local political considerations or, in some cases, by personal notions of punishment born out of religious or racial bias (or self-hatred). Although higher courts sometimes consult before sentencing with correctional officers about the defendant's potential for reform, even the most sensitive official cannot ordinarily provide for the needs of the individual defendant, and at the same time his village, and the legal system.

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The court system's punishments appear pointlessly abstract to a defendant who expects that they will be designed to reconstruct relationships, assuage personal feelings, and reestablish his reputation in the community. The severity of the sentence the defendant receives may at times be related to the defendant's expressions of sorrow or guilt, but the court will usually make no attempt to insure that he recompenses his victim or his community. In fact, the sentence tends to strike against the community, especially those who are dependent upon the wrongdoer for sustenance.

Fines are an abstract payment to a faceless public authority, and jail sentences are a strangely distorted version of traditional banishment. Formerly inflicted for only the most serious crimes committed by unrepentant offenders, banishment has become routine through the imposition of jail sentences on most defendants who are arrested by state troopers and processed through the magistrate's court. Modern day banishment is not only routine, but also considerably pleasant, since the jail is warm and serves regular meals.

Although the typical Athabascan may question the legitimacy of white authority or the appropriateness of its response in singling him out as a malefactor and imposing punishment upon him, he cannot escape its power. Absolute authority is something that he well understands. The fact that he is on trial makes him assume he is guilty according to laws he evidently does not understand. Yet, he is often confused by the denouement of the trial because he is not reconciled with anyone and he recompenses no one. The punishment does not fit the crime as he understands crime and punishment. He leaves the encounter in the belief that the best thing to do, if he is the victim of a crime, is to avoid the legal process. As defendant, he may well feel that there is no justice, since the justice with which he is most comfortable would be connected with his role in village society.

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